

Hayward, Parker & O'Leary
Attorneys for Debtor
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Michael O'Leary, Esq.

HEARING DATE: 09/22/2020
HEARING TIME: 9:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

RACHEL ELVIRA LAGODKA

Chapter 13
Case No.16-36915 (cgm)

Debtors.

**NOTICE OF HEARING ON SECOND INTERIM FEE APPLICATION
BY ATTORNEYS FOR DEBTOR**

TO: THE CREDITORS OF THE ABOVE-NAMED DEBTORS
AND ALL OTHER INTERESTED PARTIES

NOTICE IS HEREBY GIVEN pursuant to 11 U.S.C. §§ 330 and 331 and Fed. R. Bankr. P. 2016(a) and Local Bankruptcy Rule 2016-1 that the following application for the allowance of fees and reimbursement of expenses has been filed and that a hearing will be held before the Hon. Cecelia G. Morris at the United States Bankruptcy Court for the Southern District of New York, Poughkeepsie Division, 355 Main Street, Poughkeepsie, New York 12601 on September 22, 2020 at 9:00 a.m., or at any other time that the Court may subsequently designate:

HAYWARD, PARKER & O'LEARY, ESQS.
Attorneys for the Debtor

FEES (06/09/20 – 08/08/20)	\$ 3,710.00
DISBURSEMENTS	\$ 13.41
TOTAL REQUESTED IN THIS APPLICATION	\$ 3,723.41

TOTAL FEES PREVIOUSLY AWARDED TO APPLICANT	\$ 8,270.00
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TOTAL DISBURSEMENTS PREVIOUSLY AWARDED TO APPLICANT	\$ 7.94
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Objections to the foregoing request may be heard at the above hearing before the allowance is determined. The fee application and supporting documents will be on file with the Clerk of the Bankruptcy Court at the U.S. Bankruptcy Court, 355 Main Street, Poughkeepsie, New York 12601.

Pursuant to applicable Local Bankruptcy Rules, objections to the compensation requested above must be filed with the Court and served so as to be received no later than seven (7) days before the above-listed hearing date, upon Hayward, Parker & O'Leary, attn: Michael O'Leary, 225 Dolson Ave., Suite 303, P.O. Box 929, Middletown, NY 10940.

Dated: Middletown, NY
August 8, 2020

Hayward Parker & O'Leary

By: s/ Michael O'Leary
Attorneys for Debtor
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

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Chapter 13
Case No.16-36915 (cgm)

Debtors.

**SECOND INTERIM APPLICATION FOR ALLOWANCE OF COMPENSATION
AND
REIMBURSEMENT OF EXPENSES BY ATTORNEYS FOR DEBTOR**

TO: THE HONORABLE CECELIA G. MORRIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Hayward, Parker & O'Leary (the "Applicant") now makes its second interim application for the allowance of fees and reimbursement of expenses (the "Application") pursuant to 11 U.S.C. §§ 330 and 331 and Fed. R. Bankr. P. 2016(a) and Local Bankruptcy Rule 2016-1, and in support of its Application respectfully shows as follows:

1. Debtor filed this Chapter 13 case on November 9, 2016.
2. Applicant seeks the allowance of fees and reimbursement of expenses incurred in connection with a successful post-confirmation Rule 3002.1 (e) Motion determining that certain expenses and charges sought by the purported mortgage holder were not recoverable against either debtor or debtor's residence. See Docket Entry No. 66.

3. The fees and expenses for which allowance and reimbursement are sought in this application pertain to the Rule 3002.1(e) Motion only, and are in addition to the preparation and prosecution of the main Chapter 13 case. Representation in "...motion practice...including but not limited to...claims objections, post confirmation matters..." is expressly excluded from the Debtor's base fee on the Rule 2016(b) disclosure form signed by Applicant.

4. The period covered by the Application is from June 9, 2020 to August 8, 2020. A summary of the contemporaneous daily records of time and disbursements for that period is annexed as Exhibit "A". Applicant requests the allowance of \$3,710.00 in fees and \$13.41 in reimbursement of expenses, as set forth below and itemized on Exhibit "A".

5. Attorney time for Michael O'Leary was billed at \$350.00 per hour through December 31, 2014, and at \$400.00 per hour commencing January 1, 2015. There was no attorney time billed at the rate of \$350.00 per hour. The hours of attorney time billed at \$400.00 are 9.0, or \$3,600.00. The total billed for attorney time is \$3,600.00.

6. Paralegal time was billed at \$90.00 per hour through December 31, 2014, and at \$100.00 per hour commencing on January 1, 2015. There was no paralegal time billed at the rate of \$90.00 per hour. The hours of paralegal time billed at \$100.00 per hour are 1.1, or \$110.00. The total billed for paralegal time is \$110.00.

7. Applicant also seeks reimbursement of expenses of \$13.41. In-house photocopies were billed at \$0.10 per page. Other charges such as postage are billed at Applicant's actual cost. *See Exhibit "A".*

8. The rates charged for this work were reasonable, and the services were beneficial to the Debtor and derivatively to his estate. Given the scope, importance to the Debtor and the complexity of issues involved, the matter was handled within a reasonable time and the compensation sought is comparable to that customarily paid to comparably skilled practitioners in non-bankruptcy cases.

9. Attorney Michael O'Leary graduated from the Buffalo Law School in 1977 and has practiced bankruptcy law since 1981, representing debtors in cases under Chapter 7 and 13. Mr. O'Leary served as a member of the Chapter 7 trustee panel in Poughkeepsie for 17 years from 1994 through 2011, and is a past president of the Hudson Valley Bankruptcy Bar Association. Professional memberships include the American Bankruptcy Institute, the National Association of Consumer Bankruptcy Attorneys, the New York State Bar Association, the National Association of Bankruptcy Trustees and the National Association of Chapter 13 Trustees.

10. Applicant has not entered into any agreement to fix fees or to share compensation as prohibited by 18 U.S.C. § 155 and 11 U.S.C. § 504.

11. Applicant has received no payment for services rendered or to be rendered in connection with this case, beyond the prepetition retainer of \$3,500.00 for the main Chapter 13 case and the \$310.00 for the case filing fee, plus fees and expenses totaling \$8,277.94 from a pre-confirmation award of interim fees and expenses. See Docket Entry No. 57. A copy of Applicant's Rule 2016 disclosure is attached as Exhibit "B". Applicant has received no further payments for services rendered in this case, whether from the Debtor or by others on his behalf.

12. The Chapter 13 estate has the ability to pay the fees sought in this Application.
13. The Debtor has been served with a copy of this Application.
14. A separate memorandum of law accompanies this Application.
15. No prior request has been made for the relief sought in this Application.

WHEREFORE, Applicant Hayward, Parker & O'Leary seeks the entry of an Order:

- (a) allowing Applicant's professional fees in the amount of \$3,710.00, and reimbursement of expenses in the further amount of \$13.41, for a total allowance of \$3,723.41 as an administrative expense of this Chapter 13 case; and
- (b) for such other and further relief as is just and proper.

Dated: Middletown, NY
August 8, 2020

Hayward Parker & O'Leary

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UNITED STATES BANKRUPTCY COURT
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**MEMORANDUM OF LAW IN SUPPORT OF SECOND
INTERIM APPLICATION FOR ALLOWANCE OF COMPENSATION AND
REIMBURSEMENT OF EXPENSES BY ATTORNEYS FOR DEBTOR**

Debtor's counsel Hayward, Parker & O'Leary ("Applicant") submits this memorandum in support of its second interim fee application dated August 8, 2020, and respectfully shows as follows:

1. Professional compensation in bankruptcy cases is governed by Bankruptcy Code § 330, which provides in pertinent part as follows:

(a)(3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, extent, and the value of such services, taking into account all relevant factors, including –

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill or experience in the bankruptcy field; and

(F) whether the compensation is reasonably based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for—

- (i) unnecessary duplication of services; or
- (ii) services that were not—
- (I) reasonably likely to benefit the debtor's estate; or
- (II) necessary to the administration of the case.

(B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

2. Subparagraph (B) of section 330 applies here. This is a Chapter 13 case, and the services rendered for which compensation is sought in Applicant's interim fee application were both beneficial and necessary to Chapter 13 debtor Rachel Elvira Lagodka (the "Debtor"). The successful prosecution of the Rule 3002.1(e) Motion provided significant relief and benefit to the Debtor, as she and her residence are now unburdened by the claim brought by the purported mortgage holder.

3. The legal services rendered served the Debtor's financial needs, the amounts sought are reasonable, the work was done by competent professionals within a reasonable time given the tasks to be accomplished, and the work was both necessary to achieve the Debtors' goals and resulted in the accomplishment of those goals.

4. Interim compensation is authorized by Bankruptcy Code § 331. Applicant seeks approval of interim compensation here given the possibility of the need for additional legal services in the future.

WHEREFORE, Applicant Hayward, Parker & O'Leary seeks the entry of an Order:

- (a) allowing Applicant's professional fees in the amount of \$3,710.00, and reimbursement of expenses in the further amount of \$13.41, for a total allowance of \$3,723.41 as an administrative expense of this Chapter 13 case; and
- (b) for such other and further relief as is just and proper.

Dated: Middletown, NY
August 8, 2020

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CERTIFICATION

1. The undersigned certifies that I am the professional designated by applicant Hayward, Parker & O'Leary with the responsibility for compliance with the guidelines for fees and disbursements for professionals in Southern District of New York in this bankruptcy case.

2. I have read the annexed application and, to the best of my knowledge, information and belief formed after reasonable inquiry, the application complies with the mandatory guidelines.

3. To the best of my knowledge, information and belief formed after reasonable inquiry, the fees and disbursements sought fall within the guidelines.

4. The fees and disbursements sought are billed at rates and in accordance with practices customarily employed by the applicant and generally accepted by applicant's clients.

Dated: Middletown, NY
August 8, 2020

s/ Michael O'Leary